

June 21, 2017

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Request for Review by Locus Telecommunications, LLC of Decisions of the Title II Program Administrators and Petition for Declaratory Rulings Relative to the Treatment of Private Carriage Revenues, Docket No. 06-122*

Dear Ms. Dortch:

On behalf of Locus Telecommunications, LLC ("Locus" or "the Company") this letter seeks Commission action on Locus's pending [Request for Review](#) and [Petition for Declaratory Ruling](#). Additionally, Locus would like to draw the Commission's attention to a recent decision which supports long-standing precedent on evaluating and distinguishing between services offered on a private and common carriage basis.

Locus filed its [Request for Review](#) on November 22, 2016, appealing the rejection of the Company's Telecommunications Relay Services ("TRS"), Local Number Portability ("LNP"), and North American Numbering Plan Administration ("NANPA") fee (collectively, "Title II Program Fees") invoices by the respective administrators of those funds. Even though (in 2015) Locus sold some services on a common carriage basis, it sold others on a private carriage basis. Revenue from services sold on a private carriage basis should have been excluded from the Company's Title II Program Fee contribution base. However, because Locus did not list "private service provider" as its primary (#1) service in Line 105 of the 2016 Form 499-A, USAC shared all Form 499-A revenue data with the Title II Program administrators, who (incorrectly) billed Locus on the basis of ALL revenues reported on the Form, rather than common carrier revenues only. Locus appealed its July 2016 invoices to the respective administrators, copying USAC. The administrators declined to issue decisions on those appeals, directing Locus to contact USAC. USAC referred Locus back to the other fund administrators. Thereafter, Locus appealed to the Commission.

Concurrent with its Request for Review, Locus filed a Petition for Declaratory Ruling seeking declaratory rulings relative to the treatment of private carriage revenues for Title II Program Fee purposes, and, in particular, USAC's unlawful policy of sharing revenue data with the Title II Program administrators based exclusively on the primary service category identified in Line 105 of the Form 499-A. That Petition remains pending, and has yet to be put on Public Notice.

Since appealing, Locus has met with [Wireline Bureau](#) and [Commission staff](#) in an effort to educate the Commission on these issues, and encourage action on the Request for Review and Petition for Declaratory Ruling. However, we are aware of no action on the pending Request for Review, and the Petition for Declaratory Ruling remains un-docketed, with no Public Notice released to date.

Locus encourages the Commission to act upon the important issues raised in its Request for Review. In addition, Locus urges publication of its Petition for Declaratory Ruling to allow the public an opportunity to submit comments.

Locus's instant request for action on these pending matters is stimulated by the recent Business Data Services ("BDS") Order,¹ where the Commission clarified and endorsed long-standing private carriage legal precedent – precedent cited by Locus in support of private carriage treatment of certain revenue streams.

In that [Order](#), the Commission confirmed that each service must be evaluated independently to determine whether it qualifies as a private or common carriage offering. The Commission further confirmed that "telecommunications carriers are acting as common carriers to the extent that they are providing such services."² The Commission found that "sufficient evidence of individualized determinations whether to offer service to given customers and, when services are offered, individualization on a sufficient range of key terms of the offering...warrant[ed] a finding of private carriage."³

Consistent with long-standing precedent and the FCC's recent BDS Order, the Commission should direct USAC to abandon its policy of sharing all Form 499-A data with the Title II Program administrators for billing purposes and instruct USAC to respect a filer's certified exclusion of private carriage revenues from its Title II Program contribution base via Line 603 of the Form, consistent with federal law.

On behalf of Locus, I invite you to contact me at (703) 714-1313 or jsm@commlawgroup.com should you seek further input, either in writing or otherwise, regarding the specific matters raised in Locus's pending [Request for Review](#) and [Petition for Declaratory Ruling](#).

Respectfully submitted,



Jonathan S. Marashlian
Counsel to Locus Telecommunications, LLC

cc: Michael Morrissey, General Counsel, Locus Telecommunications, LLC

¹ *In the Matter of Business Data Services in an Internet Protocol Environment, Technology Transitions, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order, FCC 17-43 at para. 270 (Apr. 28, 2017) ("BDS Order") ("Our approach to such classification issues requires an understanding and analysis of the facts regarding particular service offerings.").

² BDS Order at para. 269, n. 663 (citing *Bell Tel. Co. v. FCC*, 19 F.3d 1475, 1481 (D.C. Cir. 1994) ("As we said in NARUC II, 'it is at least logical to conclude that one can be a common carrier with regard to some activities but not others.'" (quoting *National Association of Regulatory Utility Comm'rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976))); see also 47 U.S.C. § 153(51) ("[a] telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services").

³ BDS Order at para. 276.